IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3306 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE A.M.KAPADIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KAMDHENU NUTRIENTS PVT LTD

Versus

GUJARAT POLLUTION CONTROL

Appearance:

MR MIHIR H JOSHI for Petitioner

MR HARESH J TRIVEDI for Respondents

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE A.M.KAPADIA

Date of decision: 26/04/2000

ORAL JUDGEMENT (Per J.M. Panchal, J.):

1. Rule. Mr. H.J. Trivedi, learned counsel waives

service of notice of rule on behalf of the respondents. Having regard to the facts of the case and in view of the joint request made by the learned counsel for the parties, the petition is taken up for final hearing today.

2. By means of filing this petition under Article 226 of the Constitution the petitioner has prayed to issue a writ of mandamus or any other appropriate writ, order or direction to quash and set aside order dated April 11, 2000 passed by the respondent No.1 by which application made by the petitioner for obtaining consent under the provisions of Water (Prevention and Control of Pollution) Act, 1974 ('the Water Act' for short hereinafter) is rejected because of the directives of the High Court issued in judgment dated October 21, 1999 rendered in Special Civil Application No. 4473 of 1997. The petitioner has also prayed to quash and set aside order dated April 1, 2000 passed by the respondent No.2 by which original order of closure dated September 22, 1999 is ordered to be implemented. The petitioner has further prayed to command the respondent No.1 to process, consider and grant the application for consent submitted by the petition under the provisions of the Water Act, uninfluenced by the directives of the High Court contained in the judgment dated October 21, 199 which was rendered in Special Civil Application No. 4473 of 1997.

3. The petitioner is a Private Limited Company registered and incorporated under the provisions of the Companies Act, 1956. It is, inter alia, engaged in the business of manufacturing Di Calcium Phosphate at its factory situated at GIDC, Panoli, Taluka Ankleshwar. The petitioner was granted a No Objection Certificate for setting up its industrial plant on February 2, 1999. The petitioner was also granted consent under the provisions of Air Act on October 8, 1999. On inspection by the officers of the respondent No.1 on August 23, 1999 it was found that the petitioner was discharging industrial effluent without adequate treatment. Therefore, by an order dated September 22, 1999 the petitioner was directed to stop the production activities. On the representation of the petitioner as well as other visits by the officers of the respondent No.1, enforcement of order dated September 22, 1999 was suspended by order dated October 6, 1999. From the record of the petition it is evident that the suspension of the closure order was issued from time to time. Initially the application submitted by the petitioner for obtaining consent under the Water Act was not granted and, therefore, the petitioner had to file another application on December

14, 1999. In view of the second application, the officers of the respondents had taken samples of the effluent of the unit and analysed them. The report dated March 7, 2000, which is on the record of the case at Annexure 'G' to the petition, indicates that the petitioner unit was meeting with the prescribed parameters. In view of the performance of the unit the suspension of the closure order was continued upto April 30, 2000 by order dated March 23, 2000. However, an order dated April 1, 2000 was served on the petitioner by which closure order dated September 22, 1999 is brought into force. The above referred to order was passed on the report of the first respondent that the consent was going to be refused to the petitioner and, therefore, there was no justification in extending the suspension of the closure order. Ultimately, by an order dated April 11, 2000, the application submitted by the petitioner for obtaining consent under the Water Act was rejected on the ground that the petitioner was not entitled to consent in view of the directives of the High Court contained in the judgment dated October 21, 1999 which was rendered in Special Civil Application No. 4473 of 1997. The main ground averred by the petitioner in the petition is that it is not a new industry and, therefore, not covered by the directives of the High Court issued in Special Civil Application No. 4473 of 1997. The petitioner has therefore filed the present petition and claimed reliefs to which reference is made earlier.

4. We may mention that Amar Pigments through its partner Ajay Desai had filed Special Civil Application No. 81 of 2000 against the Gujarat Pollution Control Board by claiming similar reliefs. Therein the Division Bench comprising M.S. Shah & R.R. Tripathi, JJ., had issued Rule by an order dated February 8, 2000 and given interim direction to the Gujarat Pollution Control Board to consider the application of Amar Pigments for No Objection Certificate in accordance with law and in the light of observations made in the order. It was also directed to consider the grant of No Objection Certificate for trial production on such terms and conditions on which Gujarat Pollution Control Board normally grants No Objection Certificate in similar cases. The further direction given was that the matter should be considered by the Gujarat Pollution Control Board within two weeks from the date of the order.

5. Pursuant to the interim order dated February 8, 2000 in Special Civil Application No. 81 of 2000, case of Amar Pigments was considered by Gujarat Pollution Control Board and No Objection Certificate was granted to

it vide letter dated February 18, 2000. Under the circumstances, we are of the opinion that interest of justice would be served if Gujarat Pollution Control Board is directed to consider the application of the petitioner for consent in accordance with law and in the light of the observations made by the High Court in the order dated February 8, 2000 which was passed in Special Civil Application No. 81 of 2000.

6. For the foregoing reasons, the petition partly succeeds. The order dated April 1, 2000 passed by the respondent No.2 by which closure order dated September 22, 1999 is brought into force, is hereby set aside and quashed. Similarly, the order dated April 11, 2000 passed by the respondent No.1 rejecting the application for consent submitted by the petitioner under the provisions of the Water Act on the ground that it cannot be entertained in view of the directives of the High Court issued in Special Civil Application No. 4473 of 1997, is also set aside and quashed. The respondent No.1 is directed to process and consider the application for consent submitted by the petitioner under the Water Act uninfluenced by the directives of the High Court issued in Special Civil Application No. 4473 of 1997. The application shall be processed after considering interim directions which were given by the High Court in Special Civil Application No. 81 of 2000. Till the application is considered by the respondent No.1 on merits as mentioned above, the closure order dated September 22, 1999 shall not be implemented. The application submitted by the petitioner for consent shall be considered as early as possible and preferably within four weeks from today. It is clarified that the petitioner shall not be entitled to the benefit of the provisions of deemed grant of the application which is already submitted. Rule is made absolute accordingly with no orders as to costs.

(J.M. Panchal, J.)

26.4.2000. (A.M. Kapadia, J.)

(karan)